

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

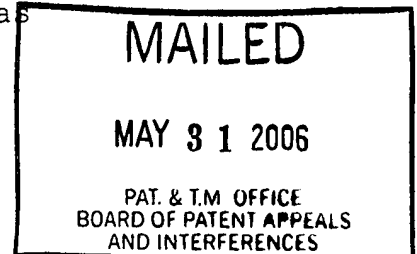
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte Wolfgang Weidner and Hans Murcas

Appeal No. 2006-1019
Application No. 09/367,569

ON BRIEF



Before KRASS, BARRY, and SAADAT, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 9-18.

Appeal No. 2006-1019
Application No. 09/367,569

The invention is directed to a radio apparatus, such as a mobile or cordless telephone. In particular, a control element selects and/or activates functions displayed on a display device on the radio apparatus.

Independent claim 9 is reproduced as follows:

9. A radio apparatus embodied in a radio telephone, comprising a display device; at least one control element for selecting and/or activating functions of the radio apparatus which are displayed on said display device; said at least one control element being disposed neighboring said display device so that a local association exists between said at least one control element and displaying of functions of the radio apparatus on said display device; said display device displaying a function of the radio apparatus in local association with said at least one control element, said function being activatable by said control element; and said display device displaying an information with regard to the activating function in local association with said at least one control element when said function is activated.

The examiner relies on the following references:

Tsoi	5,633,912	May 27, 1997
Owaki	5,956,628	Sep 21, 1999
Mills	5,969,718	Oct 19, 1999
Bowen et al (Bowen)	6,046,730	Apr 4, 2000 (Filed Jul. 30, 1996)

Appeal No. 2006-1019
Application No. 09/367,569

Claims 9-18 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner offers Tsoi and Owaki with regard to claims 9, 12, and 14-18, adding Mills with regard to claims 10, 11, and 13. Claim 13 stands further rejected under 35 U.S.C. § 103 as unpatentable over Tsoi in view of Bowen.

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

In accordance with appellants' grouping of the claims, at page 14 of the brief, all claims will stand or fall together. Therefore, we concentrate on independent claim 9.

The examiner's position is that Tsoi discloses a radio apparatus and a display device, with at least one control element for selecting and/or activating functions of the apparatus which are displayed on the display device, citing column 6, lines 40-43. The examiner also indicates that column 2, lines 50-53, of Tsoi describes the at least one control element being disposed neighboring the display device so that a local association exists between the at least one control element and displaying of functions of the apparatus on the display device. Moreover, the examiner points to column 6, lines 62-65; and column 7, lines 1-6, and well as figures 7 and 9, of Tsoi for a description of the

display device displaying a function of the apparatus in local association with the at least one control element, with the function being activatable by the control element.

The examiner indicates that Tsoi does not disclose a display device displaying information with regard to the activating function in local association with the at least one control element when the function is activated.

However, according to the examiner, Owaki discloses a radio apparatus with a display device displaying information with regard to the activating function in local association with the at least one control element when the function is activated. The examiner identifies figures 12a-d and 13a-d of Owaki.

The examiner concludes that it would have been obvious to add Owaki's teachings to the Tsoi apparatus "for an enhanced support information display" (final rejection of January 16, 2003-page 3).

Appellants' position is that "in accordance with the present invention, in local association with the control element an information about the function is displayed when the function is activated by pushing the control element" (brief-page 15) and that the advantage of this is that "it is clear to the user to which function the information belongs. If the function is active the information is displayed if not the function itself is described in the display" (brief-page 15).

Appellants agree with the examiner that Tsoi does not specifically disclose a display device displaying information with regard to the activating function in local association with the at least one control element when the function is activated, pointing out that in Tsoi, in a local association with a control element two different functions are displayed, in particular the function "CALL" and the function "HANG UP."

Appellants argue that Owaki only discloses how to arrange several information pages in the form of a main menu and several submenus, and "does not teach to display in local association with a control element, a function and after activating the function display an information about the function" (brief-page 16).

Appellants conclude that there would have been no motivation to amend the subject matter of Tsoi with Owaki because the artisan would not have sought to "replace the second function displayed by the patent to Tsoi in the case of activation of the first function by an information about the first function, but it would add to Tsoi a menu structure as described by the patent to Owaki" (brief-page 17).

We have reviewed the evidence before us, including, inter alia, the disclosures of the applied references and the arguments of appellants and the examiner, and we conclude therefrom that there is a prima facie case of obviousness provided by Tsoi alone, with no convincing rebuttal by appellants.

Tsoi, in Figures 7 and 8, for example, describes a radio apparatus in a radio telephone comprising a display device 76, and at least one control element, soft key 82, for selecting and/or activating functions of the apparatus which are displayed on the display device. Note that the selection of soft key 82 in Figure 7 activates the "CALL" function.

The control element, soft key 82, is clearly disposed "neighboring said display device so that a local association exists between said at least one control element and displaying of functions of the radio apparatus on said display device," as claimed. Note that soft key 82 is next to and associated with the function "CALL" which is displayed on the display device 76.

The function "CALL" is "activatable by said control element" since the depressing of soft key 82 activates the function "CALL" in Figure 7 of Tsoi.

Moreover, there is also information displayed on display device 76 "with regard to the activating function in local association with said at least one control element when said function is activated," as claimed. In particular, when control element, soft key 82 is depressed in the Figure 7 depiction in Tsoi, the "CALL" function is activated. Once this function is activated, there is information displayed (see "HANG UP" in Figure 8) on the display device 76 and this new information "HANG UP" is "with regard to the activating function" because it

Appeal No. 2006-1019
Application No. 09/367,569

appears as a result of the selection/activation of "CALL" so that the user may cancel the call if desired (see column 6, line 52, through column 7, line 8, of Tsoi). This new information "HANG UP" is also "in local association with said at least one control element when said function is activated," as claimed because "HANG UP" is adjacent to, and activated by depressing, soft key 82.

Accordingly, the claimed subject matter is met by Tsoi alone and since anticipation is the epitome of obviousness, In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); and the lack of novelty is the ultimate of obviousness, In re Pearson, 494 F.2d 1399, 1402, 181 USPQ 641, 645 (1974), we will sustain the rejection of claims 9-18 under 35 U.S.C. § 103.

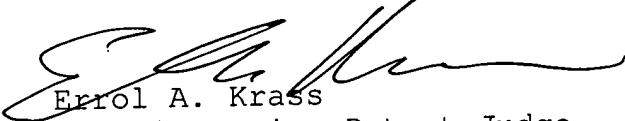
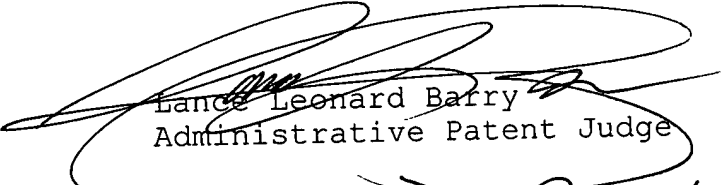

To the extent that we may have applied the Tsoi reference in a manner somewhat different than the examiner, this does not constitute a new ground of rejection. In re Halley, 296 F.2d 774, 132 USPQ 16 (CCPA 1961); In re Bush, 296 F.2d 491, 496, 131 USPQ 263, 276 (CCPA 1961). The Board may use parts of a reference ignored by the examiner when applying that reference without constituting a new ground of rejection. In re Meinhardt, 392 F.2d 273, 280, 157 USPQ 270, 275 (CCPA 1968).

Appeal No. 2006-1019
Application No. 09/367,569

The examiner's decision rejecting claims 9-18 under 35
U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 C.F.R.
§ 1.136(a)(1)(iv).

AFFIRMED

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Errol A. Krass)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
Lance Leonard Barry)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
Mahshid D. Saadat)	
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Appeal No. 2006-1019
Application No. 09/367,569

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